WILLARD CHEEK AND LOUISE CHEEK

JANUARY 29, 1951.—Ordered to be printed

Mr. McCarran, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 464]

The Committee on the Judiciary, to which was referred the bill (S. 464) for the relief of Willard Cheek and Louise Cheek, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

AMENDMENT

Strike out all after the enacting clause and insert in lieu thereof the following:

That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of \$2,500 to Willard Cheek, and the sum of \$2,500 to Louise Cheek, both of Melville, Louisiana, in full settlement of all claims against the United States on account of the death of their father, Charlie Cheek, and burial expenses incurred, as a result of an accident involving an Army airplane which occurred at Barksdale Field, Bossier Parish, Louisiana, on September 10, 1941, when said Army airplane crashed into a truck in which the said Charlie Cheek was working: Provided, That no part of the amounts appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, or attorney or attorneys, on account of services rendered in connection with these claims, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

PURPOSE

The purpose of the proposed legislation, as amended, is to pay the sum of \$2,500 to Willard Cheek, and the sum of \$2,500 to Louise Cheek, both of Melville, La., in full settlement of all claims against

burial of Mr. Cheek.

the United States on account of the death of their father, Charlie Cheek, and burial expenses incurred, as a result of an accident involving an Army airplane which occurred at Barksdale Field, Bossier Parish, La., on September 10, 1941, when said Army airplane crashed into a truck in which the said Charlie Cheek was working.

STATEMENT

It appears from the records of the Department of the Army on S. 2952, of the Eighty-first Congress, which is set forth in part as follows:

That on September 10, 1941, the Forcum-James Co., general contractors of Dyersburg, Tenn., was engaged in the construction of runways and taxiways at Barksdale Field, La.; that on that date, while Charlie Cheek, an employee of said company, was operating a motor vehicle at the site of the project, and Army airplane ran off a runway and crashed into such vehicle; and that as a result of the crash and ensuing fire Mr. Cheek was burned to death.

Charlie Cheek was 38 years of age at the time of his death. He had been married twice, and had two children, Willard Cheek and Louise Cheek, by his first wife, but none by his second wife, Mrs. Ruby Mae Cheek. Only one of the two children was classified as a dependent of Charlie Cheek at the time of his death, as the other child had lived with an aunt since birth and was not being supported by Mr. Cheek. The compensation, which was awarded under the Louisiana workmen's compensation law, on account of Mr. Cheek's death, therefore, was divided equally between Mrs. Ruby Mae Cheek and the child who was living with her and Mr. Cheek at the time of the latter's death. Compensation payments based on 46½ percent of Mr. Cheek's weekly wage of \$20, amounting to \$9.25 per week, were divided equally between Mrs. Ruby Mae Cheek and the child who was living with her. This child became 18 years of age on November Cheek was remarried on March 18, 1943, to one James Paul Martin, by reason of which fact compensation payments for it ceased. Mrs. Ruby Mae Cheek was remarried on March 18, 1943, to one James Paul Martin, by reason of which fact compensation payments to her ceased. The total payments made to both dependents amounted to \$890.04, plus \$150 for burial expenses and \$78 for the appointment of a tutor for the minor child. The Department of the Army has no information with respect to the expenses incurred in connection with the

The evidence in this case fairly establishes that this aircraft accident and the resulting death of Charlie Cheek were not caused by any fault or negligence on his part but arose out of noncombat activity of the Army. The Department of the Army, therefore, believes that the two children of the deceased should be compensated in a reasonable amount for their father's death. The proposed award of \$15,000 provided in S. 2952 appears to be somewhat excessive. Considering the age, occupation, and earnings of the decedent at the time of his death, and the amount of the compensation benefits that were paid by the workmen's compensation insurance carrier of the decedent's employer, it is believed that awards to Mr. Cheek's two children totaling \$9,000 (\$4,500 for Willard Cheek and \$4,500 for Louise Cheek) would constitute fair and reasonable settlements of their claims. The Department of the Army, accordingly, would have no objection to the enactment of this bill if it should be amended to provide for an award to Willard Cheek in the amount of \$4,500 and an award to Louise Cheek in a like

The Department of the Army states in part, as follows:

These claimants have no remedy under the Federal Tort Claims Act (60 Stat. 843; 28 U. S. C. 931), as revised and codified by the act of June 25, 1948 (62 Stat. 933; 28 U. S. C. 1346 (b)), and as amended by the act of April 25, 1949 (Public Law 55, 81st Cong.), for the reason that the accident out of which their claims arise occurred prior to January 1, 1945.

The Department of Justice concurs generally in the remarks of the Department of the Army, but indicates that the sum as suggested by the Army Department appears to be somewhat excessive and recommends that the amount of \$5,000 be substituted therefor.

From the Army report it would appear that there was one child who lived with an aunt and one child who lived with the father and was completely supported by him. According to a letter received by the sponsor of the bill of the Eighty-first Congress (S. 2952), said letter being hereto attached, it was Louise Cheek who was living with the aunt and Willard Cheek who was living with the father; however, that letter points out that the father contributed substantially to the support of the child living with the aunt. Accordingly the committee is of the opinion that Louise Cheek at the time was a dependent of the deceased Charlie Cheek.

The committee believe that there is liability on the part of the United States Government to pay the claim and while there is merit to the suggestions of the Department of the Army, the committee is of the opinion that the amount proposed by the Department of Justice is the amount that seems to be more just and reasonable and therefore

recommends that the bill, as amended, be considered favorably.

Attached hereto and made a part of this report are letters from the Department of Justice, dated November 7, 1950, from the Department of the Army, dated July 27, 1950, and a letter addressed to Senator Russell B. Long, the sponsor of the bill, dated December 29,

> DEPARTMENT OF JUSTICE, November 7, 1950.

Hon. PAT McCARRAN,

Chairman, Committee on the Judiciary, United States Senate, Washington, D. C.

My DEAR SENATOR: This is in response to your request for the views of the Department of Justice relative to the bill (S. 2952) for the relief of Willard Cheek and Louise Cheek.

The bill would provide for the payment of the sum of \$15,000 to Willard Cheek and Louise Cheek, Melville, La., for damages and burial expenses on account of the death of their father, Charlie Cheek, resulting from an accident involving an

In compliance with your request, a report was obtained from the Department of the Army concerning this legislation. According to that report, which is enclosed, it appears that on September 10, 1941, Charlie Cheek, who was employed by a firm of general contractors, engaged in the construction of runways and taxiways at Barksdale Field, La., was operating a motor vehicle at the site of the project. An Army airplane ran off the runway, crashed into the vehicle and as a result of the crash and ensuing fire, Mr. Cheek was burned to death. At the time of his death he was 38 years of age and left surviving his wife and two children by a former marriage. Only one of the children was classified as a dependent of Charlie Cheek at the time of his death as the other child had lived with an aunt since birth and was not being supported by Mr. Cheek. Compensation under the Louisiana workmen's compensation law was awarded to his wife and the one dependent child. This child became 18 years of age on November 8, 1943, at which time the compensation payments for it ceased. Mrs. Cheek was remarried on March 18, 1943, by reason of which fact compensation payments to her ceased. The total of payments made to both dependents amounted to \$890.04, plus \$150 for burial expenses and \$78 for the appointment of a tutor for the minor child.

The Department of the Army states that the evidence fairly establishes that the accident and resulting death of Charlie Cheek arose out of noncombat activity of the Army and that it believes that the two children of the deceased should be compensated in a reasonable amount for the father's death, but that the proposed award of \$15,000 appears to be somewhat excessive. That Department states that it believes that an award of \$4,500 to each of the two children, or a total of \$9,000, would constitute a fair and reasonable settlement of the claims. report states that the Department of the Army would have no objection to enactment of the bill if it should be amended in accordance with the suggested amended bill set out on pages 2 and 3 of the report.

The Department of Justice concurs in the view of the Department of the Army that the proposed award of \$15,000 appears to be excessive in the light of the age, occupation, and earning capacity of the deceased at the time of his death,

together with the compensation benefits received by those heirs dependent upon him. In view of the fact that one of the claimants seems to have had no dependency upon the deceased, and the other has been compensated to some extent, and is now apparently of legal age, it is felt that even the amount suggested by the Department of the Army, to wit, \$9,000, is probably somewhat excessive and that a total payment not exceeding \$5,000 would be adequate compensation when all the factors involved in this situation are considered.

Accordingly, the Department of Justice would have no objection to enactment

of the bill if it should be amended to provide for payment of \$5,000 to be equally

divided between the claimants.

The Director of the Bureau of the Budget has advised this office that there would be no objection to the submission of this report.

Yours sincerely.

PEYTON FORD, Deputy Attorney General.

DEPARTMENT OF THE ARMY, July 27, 1950.

The honorable the ATTORNEY GENERAL, Washington, D. C.

DEAR MR. ATTORNEY GENERAL: Reference is made to your letter with which you enclosed a copy of S. 2952, Eighty-first Congress, a bill for the relief of Willard Cheek and Louise Cheek. You state that the Senate Committee on the Judiciary has requested the Department of Justice to submit a report on this bill and has advised that if reports are necessary from other sources they will be secured by your Department and submitted along with your report to the committee.

therefore, request the comments of the Department of the Army on S. 2952.

This bill would authorize and direct the Secretary of the Treasury "to pay, out of any money in the Treasury not otherwise appropriated, to Willard Cheek and Louise Cheek, Melville, Louisiana, the sum of \$15,000 for damages and burial expenses, on account of the death of their father, Charlie Cheek, resulting from an accident involving an Army airplane at Barksdale Field, Bossier Parish, Louisiana, which occurred on September 10, 1941, when said Army airplane crashed into a truck on which the said Charlie Cheek was working, which truck was within the boundaries of said Barksdale Field * * * in full settlement of all claims against the United States resulting from said accident."

It appears from the records of the Department of the Army that on September 10, 1941, the Forcum-James Co., general contractors, of Dyersburg, Tenn., was engaged in the construction of runways and taxiways at Barksdale Field, La.; that on that date, while Charlie Cheek, an employee of said company, was operating a motor vehicle at the site of the project, an Army airplane ran off a runway and crashed into such vehicle; and that as a result of the crash and ensuing fire Mr. Cheek was burned to death.

Charlie Cheek was 38 years of age at the time of his death. He had been married twice, and had two children, Willard Cheek and Louise Cheek, by his first wife, but none by his second wife, Mrs. Ruby Mae Cheek. Only one of the two children was classified as a dependent of Charlie Cheek at the time of his death, as the other child had lived with an aunt since birth and was not being supported by Mr. Cheek. The compensation, which was awarded under the Louisiana workmen's compensation law, on account of Mr. Cheek's death, therefore, was divided equally between Mrs. Ruby Mae Cheek and the child who was living with her and Mr. Cheek at the time of the latter's death. Compensation payments based on 46½ percent of Mr. Cheek's weekly wage of \$20, amounting to \$9.25 per week, were divided equally between Mrs. Ruby Mae Cheek and the child who was living with her. This child became 18 years of age on November 8, 1943, at which time the compensation payments for it ceased. Mrs. Ruby Mae Cheek was remarried on March 18, 1943, to one James Paul Martin, by reason of which fact compensation payments to her ceased. The total payments made to both dependents amounted to \$890.04, plus \$150 for burial expenses and \$78 for the appointment of a tutor for the minor child. The Department of the Army has no information with respect to the expenses incurred in connection with the burial of Mr. Cheek.

The evidence in this case fairly establishes that this aircraft accident and the resulting death of Charlie Cheek were not caused by any fault or negligence on his part but arose out of noncombat activity of the Army. The Department of the Army, therefore, believes that the two children of the deceased should be

compensated in a reasonable amount for their father's death. The proposed award of \$15,000 provided in S. 2952 appears to be somewhat excessive. sidering the age, occupation, and earnings of the decedent at the time of his death, and the amount of the compensation benefits that were paid by the workmen's compensation insurance carrier of the decedent's employer, it is believed that awards to Mr. Cheek's two children totaling \$9,000 (\$4,500 for Willard Cheek and \$4,500 for Louise Cheek) would constitute fair and reasonable settlements of their claims. The Department of the Army, accordingly, would have no objection to the enactment of this bill if it should be amended to provide for an award to Willard Cheek in the amount of \$4,500 and an award to Louise Cheek in a like amount.

It is recommended that, if this bill is favorably considered by the Congress, the text thereof be amended to read as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of \$4,500 to Willard Cheek, and the sum of \$4,500 to Louise Cheek, both of Melville, Louisiana, in full settlement of all claims against the United States on account of the death of their father, Charlie Cheek, and burial expenses incurred, as a result of an accident involving an Army airplane which excurred at Barkschle Field, Bossier Parish Louisiana, on Sextember 10. which occurred at Barksdale Field, Bossier Parish, Louisiana, on September 10, 1941, when said Army airplane crashed into a truck in which the said Charlie Cheek was working: *Provided*, That no part of the amounts appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, or attorney or attorneys, on account of services rendered in connection with these claims, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

These claimants have no remedy under the Federal Tort Claims Act (60 Stat. 843; 28 U. S. C. 931), as revised and codified by the Act of June 25, 1948 (62 Stat. 933; 28 U. S. C. 1346 (b)), and as amended by the Act of April 25, 1949 (Public Law 55, 81st Cong.), for the reason that the accident out of which their claims

arise occurred prior to January 1, 1945.

Sincerely yours,

FRANK PACE, Jr., Secretary of the Army.

HIRSCH, GREENE, & BARKER, New Orleans, La., December 29, 1950.

Senator Russell B. Long. United States Senator from Louisiana, Senate Office Building, Washington, D. C.

Dear Russell: This is in response to your letter of November 30, received from D. M. Pudifin, your secretary, with reference to Senate bill 2952 for the relief of Willard and Louise Cheek. On that occasion, it was stated that the Judiciary Committee was desirous of knowing whether or not it was Willard or Louise who lived with and was supported by the father, Charlie Check (now deceased). According to the information I have been able to obtain with reference to this inquiry, it was Louise who, at the time of her father's death, was living with her aunt. However, her father, Charlie Cheek, contributed substantially to her support.

At the time of the unfortunate accident in which Charlie Cheek was killed at Barksdale Field, Willard Cheek was living with and was supported entirely by his father. He had been living with his father and supported by him since he was 10 years of age. He was 16 at the time his father met his untimely death. Prior to the time he was 10 years old, the aunt had looked after Willard during school semesters, but even while Willard was living with his aunt, he too was

supported by his father.

Anything that can be done to expedite this relief which is being sought for the children of Charlie Cheek will be deeply appreciated. With kindest of personal regards, I remain

Very truly yours,

HIRSCH, GREENE & BARKER, AUBREY B. HIRSCH.